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For Generations: Wills, Inventories, and Wealth in Colonial Virginia

Wayne Graham

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FOR GENERATIONS:
WILLS, INVENTORIES, AND WEALTH
IN COLONIAL VIRGINIA

A Thesis

Presented to

The Faculty of the Department of History
The College of William and Mary in Virginia

In Partial Fulfillment
Of the Requirements for the Degree of
Masters of Arts

by

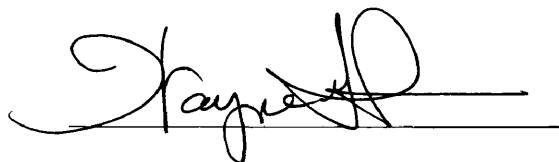
Wayne Graham

2001

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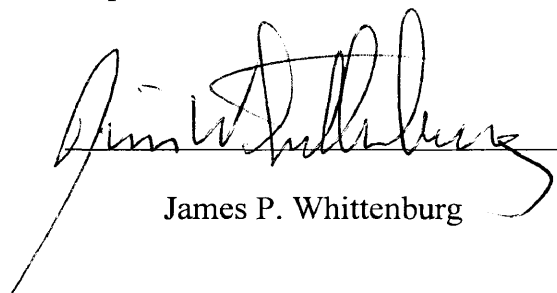
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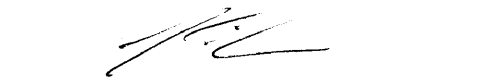
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Wayne Graham


Approved, April 2001

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James P. Whittenburg

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Kris Lane

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James Axtell

For Anna

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ABSTRACT

The purpose of this study is to investigate the thesis that 72 percent of Virginia's land was entailed by the time of the Revolution.

A limited case study utilizing content and quantitative analysis compares two counties in Virginia in diverse geographic locales, populated by different cultures, participated in separate economies, and settled at different periods of Virginia's colonial span. With this in mind, the expectation for these two counties is to participate differently in the way they passed property due to economic, social, religious, and geographic circumstances.

It is suggested, however, in this study, that in the case of testation, the two areas participated quite similarly in the writing of their wills. Further, these similarities in the language contained in the will itself were more a part of tradition than a conscious effort to tie up land in the tails.

FOR GENERATIONS: WILLS, INVENTORIES, AND WEALTH
IN COLONIAL VIRGINIA

INTRODUCTION

In 1997, Holly Brewer piqued many historians' interest when she wrote "Entailing Aristocracy in Colonial Virginia: 'Ancient Feudal Restraints' and Revolutionary Reform" in the *William and Mary Quarterly*. This article won her the Omohundro Institute of Early American History and Culture's prize for best contribution to historical literature in 1999. Her article challenged nearly thirty years of historians' basic assumptions about the structure of Virginian society. Specifically, she challenged the notion that the practice of entail (the legal precedent that forced land to be passed to lineal descendants) played a major role in the development of Virginia, pointing explicitly to the works of Bernard Bailyn, C. Ray Keim, and Robert and Katherine Brown, on how wealth was dispersed throughout the colony.¹ Since other classic studies of Virginia and even of Chesapeake culture have been based in part on the assumption that the practice of entail played a less prominent role as the colony evolved, Brewer's thesis has the potential to force a revision in our collective understanding of how Virginia was structured socially during the colonial era.²

Brewer's article asserts that 72 percent of all land in Virginia was entailed by

¹ See Bernard Bailyn, "Politics and Social Structure in Virginia," in James Morton Smith, ed., *Seventeenth-Century America: Essays in Colonial History* (Williamsburg, 1959); C. Ray Keim, "Primogeniture and Entail in Colonial Virginia," *William and Mary Quarterly*, 3rd ser., 4 (October 1968), 545-586; Robert E. Brown and B. Katherine Brown, *Virginia, 1705-1786: Democracy or Aristocracy?* (East Lansing, 1964), chapter 4.

² See Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill, 1982), 21-22, especially the note at the bottom of page 22; Gordon S. Wood, in *The Radicalism of the American Revolution* (New York, 1991), 47 notes that the existence of primogeniture and entail in Virginia is quite ambiguous, adding that Thomas Jefferson is believed to have been exaggerating when he described the power of entail and primogeniture in establishing a "Patrician order," 182.

1776 when the practice was legally ended.³ By creating a mathematical model of the cumulative effect of entail over eight generations, she shows how entailing language constrained land holdings.⁴ Brewer also analyzes the enforcement of entail in colonial Virginia by focusing on four issues: “legal stratagems to bypass entails; legislative acts to dock entails; legal docking of small estates in Virginia after 1734; and the possibility that entails were ignored because of poor record keeping in a frontier economy.”⁵

Concentrating on petitions to dock, or end, tails in Virginia, Brewer finds that it was quite difficult to dock an entail on property, and that the most common form of ending tails on land often involved entailing similar amounts of acreage of land elsewhere. Though only basing her conclusions on two extremely affluent landholders, Brewer concludes that English precedents dealing with entail were followed in Virginia, with the exception “that entails were harder to evade.”⁶

Brewer’s article is aimed squarely at refuting C. Ray Keim’s 1968 article, “Primogeniture and Entail in Colonial Virginia,” in the *William and Mary Quarterly*. “Primogeniture and Entail” was the only major work on the use of entail in colonial Virginia that attempted to explain the social customs that affected testation before

³ Holly Brewer, “Entailing Aristocracy in Colonial Virginia: ‘Ancient Feudal Restraint’s’ and Revolutionary Reform,” *William and Mary Quarterly*, 3rd ser. 54 (April 1997): 318.

⁴ See Tables I and II. Brewer uses the mathematical formula of $n = (1-x)^g$ “where n = total percentage of land not entailed, x = the percentage of wills containing entail provisions over a period less than one generation, and g = number to generations” to express the cumulative effects of entail (ibid., 318).

⁵ Ibid., 324.

⁶ Ibid., 336. Brewer concentrates the analysis of the enforcement of entails on Thomas Jefferson and Robert “King” Carter, the both of whom held vast quantities of land throughout Virginia and were part of the economic, social, and political elite.

Brewer's work.⁷ Because "Virginia was a land speculator's paradise," the only way these men could sell their land was to hold it in *fee simple* (the outright ownership of land that can be passed to anyone the owner wishes) rather than in *fee tail* (land had to be passed to a lineal descendant).⁸ Virginians had a great deal of freedom to develop their social, political, and religious customs. One result of this freedom was that men divided their land among all multiple sons, thus breaking the practice of primogeniture. Keim strengthens this argument by out that men commonly owned land in several places—they did not own contiguous parcels. Had primogeniture, which included the practice of entail, been more customary, land ownership would have been more consolidated. Further, inland migration from the peninsula to the piedmont and from Pennsylvania to the Valley of Virginia would have been impeded since so much capital was tied up in property that could not be sold easily.⁹

Keim also argued that creditors were far less willing to make loans to men whose property was entailed because entailed property was not subject to mortgage or judgment in debts. In addition, entailed land was inconvenient for men who had moved away from the entailed estate, whether they were heirs whose older brothers had died, or simply moved away from the reach of their fathers' patriarchy and then inherited the land, since they could not sell these tracts to purchase lands that were more convenient. Moreover,

⁷ Two other more recent studies of bequest patterns exist, but fail to analyze entail in Virginia. See James Dee, "Patterns of Testation: Four Tidewater Counties in Colonial Virginia," *American Journal of legal History*, 16 (1972), 154-176, and Lee J. Alston and Morton Owen Schapiro, "Inheritance Laws Across Colonies: Causes and Consequences," *Journal of Economic History*, 44 (1984), 277-287.

⁸ C. Ray Keim, "Primogeniture and Entail in colonial Virginia," *William and Mary Quarterly*, 3rd ser. 25 (October 1968): 585.

⁹ Ibid., 545-86. According to Lorena Walsh, project director, *Provisioning Early American Towns. The Chesapeake: A Multidisciplinary Case Study* (National Endowment for the Humanities Grant, The Colonial

Keim contends that the liberalization of English law and social ideals following the Revolution caused the use of primogeniture and entailed estates to disappear as voting rights were extended. Finally, Keim argued that by 1785, female and male heirs were receiving more equitable portions of their deceased parents' estates. This evidence led to the conclusion that primogeniture simply did not play a large role in Virginia culture.¹⁰

Keim's thesis went unchallenged for nearly thirty years, his article defining the basis of scholarly understanding of how Virginians bequeathed land and, to a larger extent, how Virginia culture intermingled with English legal precepts to develop a dominate hierarchical culture in Virginia. Brewer correctly criticizes Keim's work for ignoring "the fact that land, once entailed, remained entailed until the tail was broken" through the process of docking.¹¹ But her thesis also has flaws that greatly undermine her argument. While arguing that Keim's conclusions are flawed because they are based on flawed data, her findings are a reinterpretation of Keim's own data. She fails to consider that a parcel of land may have been entailed more than once in the data. She also makes some incorrect assertions as to the competence and credibility of backcountry county clerks in executing their office.

Because of the discrepancies of these two authors, this paper focuses on one tidewater county and one backcountry county, which move through two different stages of economic development at different dates, with different immigrant populations of

Williamsburg Foundation, 1997), a great deal of wealth in the Chesapeake region was tied up in land and subsistence activities associated with the land during the colonial era.

¹⁰ Ibid., 585-586; Also the Preamble to "An Act declaring tenants of lands or slaves in taille to hold the same in fee simple" states, "WHEREAS the perpetuation of property in certain families, by means of gifts made to them in fee taille, is contrary to good policy, tends to deceive fair traders, who give credit on the visible possession of such estates . . .," Henning, *Statutes at Large*, 9:226, (October 1776).

¹¹ Brewer, "Entailed Aristocracy in Virginia," 311.

varied religious backgrounds, to point out similarities in their approaches to testation patterns and in how wealth was distributed among progeny. A balance between Brewer and Keim has to be struck, because entail played an important role for certain people in Virginia while others remained unaffected by the practice, depending upon the socio-political standing of the individual family. The result of this project is to provide a better understanding of how wealth was dispersed at the household level in Virginia.

Methodology

Over the past forty years, most of the quantitative research conducted on the colonial era has focused on wealth, demographics, and the parameters of family life. Case studies of wealth and property distribution through the analysis of wills, inventories, journals, and other extant records in New England, the Chesapeake, and Middle Colonies, have given historians a general sense of everyday life during the colonial era. These regions were studied because they presumably had the greatest range and the most complete sets of colonial records. Little research has focused on the Virginia backcountry. Yet extant records in the Valley of Virginia are comparable to those found in eastern areas of the country. This thesis sets out to blend data from both the backcountry and Chesapeake regions of Virginia during the colonial era, focusing on the dispersion of wealth defined in categories of land, labor, currency, and personal property.

This study uses quantitative methods to describe the cumulative effects the language contained in wills had on two sample populations at an aggregate level. The use of statistics has provided historians who have embraced the use of quantitative methods a way to focus on certain topics in history. While the *effects* of actions are known to historians, the *causes* of those outcomes are often highly debated, and quantitative

methods have given historians one valid avenue to explore hypotheses about causal factors leading to events. However, one of the great downfalls of studies that rely solely on statistical measurements is that audiences sometimes do not fully understand the methods used. Nor do many know if the conclusions reached by the historians are valid. When done properly, statistical measures demand very technical distinctions between items, which often leads to the dehumanization of the subjects. While quantitative methods have provided a great deal of knowledge to our collective historical understanding, they generally fall short in analyzing human inconsistencies within communities.

To analyze the “who, what, when, where, and why,” questions historians ask, I have opted for a methodology of content analysis. Content analysis is best defined as “any methodological measurement applied to text (or other symbolic material) for social science purposes.”¹² In this case, the “symbolic material” is the probate records from York and Rockbridge counties in Virginia. Using the content analysis model, I apply quantitative methods as a measurement technique, rather than an inference procedure, to describe how individual families dealt with the passage of wealth between generations.¹³ Because families are the most basic unit in societies, comparing and contrasting one aggregate family against another produces a clearer picture of how individuals reacted to their environments. By taking the time to accurately delineate communities into households, this detailed study more accurately accounts for variation in individual

¹² Gilbert Shapiro and John Markoff, *Revolutionary Demands: A Content Analysis of the Cahiers de Doléances of 1789*, (Stanford, 1998), 18.

¹³ An inference technique, in respect to the methodology of content analysis laid out in *Revolutionary Demands*, refers to the idea that “from the content analysis itself one can infer some important traits of personality or society, without any necessary reference to other data.” Shapiro and Markoff argue that using inference as a measurement technique, rather than the sum of the analysis, aims at discovering the

circumstances, while being able to make generalizations about the long-term effects of the language contained in wills.

The majority of the documents used for this study have come from the Colonial Williamsburg Foundation's digital archives, PastPortal.com. This site is the Foundation's effort to digitize their collections of seventeenth- and eighteenth-century manuscripts, court records, rare books, the complete colonial *Virginia Gazette*, map and archaeological collections, and other documents related to eighteenth-century Virginia, to make them available online to more people. The site contains several groups of scholarly work that have been collected for the past thirty years. During the 1970s, the St. Mary's City Commission investigated York County, Virginia and identified most of the people who lived in Williamsburg during the seventeenth and eighteenth centuries. The Urban Culture Atlas is a geographic information systems (GIS) project that has taken on the task of mapping York County during the colonial era and has grown out of the York County Project at Colonial Williamsburg. PastPortal.com has evolved from a project exploring and analyzing "information on the production, distribution, and consumption of food and fuel in urban settings during the early years of the Industrial Revolution."¹⁴

PastPortal.com, an extensive database driven website, has been constructed through several grants from the Skaggs and Mellon foundations, and is now readily available for research purposes. I have been fortunate enough to have worked on this project for the

underlying "relationships between content analytic measurements and other variables in a research design." Ibid., 19.

¹⁴ Lorena S. Walsh, Ann Smart Martin, Joanne Bowen, with contributions by Jennifer A. Jones and Gregory J. Brown, *Provisioning Early American Towns. The Chesapeake: A Multidisciplinary Case Study*, (National Endowment for the Humanities Grant RO-22643, 1997), vii.

past two years, and have been able to adapt many of the techniques used in the development of the website for my own research.

Many of the database structures of PastPortal.com were adapted to build the Microsoft Access database on which this study is based. The study includes probate records beginning in 1776 from Rockbridge County, Virginia, and similar records from York County, Virginia. The year 1776 is significant for this study because it was the year that the legal recognition of entailed estates was ended in Virginia. Two years later, Rockbridge County was formed from parts of Augusta and Botetourt counties; it stands to reason that there should be no entailing language in Rockbridge County wills because the practice was legally abandoned two years before this county's creation. Exceptions would be those rare cases when a will was drafted before the end of the docking of tails. The docking of entails was a shift from older feudal constraints and served as a radical departure from how wealth was dispersed and held, at least in theory. To describe pre-1776 Virginia, I used a survey of the testation practices in York County from 1634 through the end of the eighteenth century to contrast how the ideals of wealth dispersion changed over time, and to establish the conservative nature of the language contained within wills.

CHAPTER I
VIRGINIA SETTLEMENT AND CULTURE

On 18 August 1741, Augustine Claiborne, Andrew Anderson, and Thomas Cousine, met with James Pasteur to add their signature to these words:

In the name of God, Amen. I, John Pasteur of the City of Williamsburg Peruke Maker, being sick and weak but in sound and perfect sense and memory well knowing the certainty of death and the uncertainty of the time do make this my last will and testament as follows:

Imprimis I commend my soul to Almighty God who gave It trusting in the merits of my blessed Saviour for salvation and my body to be decently buried at the discretion of my executors hereafter mentioned. And for the better settling mid disposing of my worldly estate I do give and bequeath it in manner following.

I give and bequeath to my friend Thomas Johnson of Charles City County one tract or parcel of land lying and being in the said County, he paying to my executors or anyone of them the sum of two pounds ten shillings current money.

Item I give and bequeath all the remaining part of my estate after my debts and credits being paid and discharged, both real and personal, to be equally divided between my loving wife Martha Pasteur and my beloved children viz Mary Cosby, wife of Mark Cosby Magdalane Cosby, wife of Samuel Cosby, Lucretia Shields wife of Matthew Shields, James, Blovet, William, Martha and Anne Pasteur.

Further my will is that my house and lot whereon I now live may be sold by my executors.

Lastly I do nominate and appoint my dear wife, Martha Pasteur, and my friends Mr. William Prentis and Mark Cosby to be my executors of this my last will and testament.

In witness whereof I. the said Testator have hereunto set my hand and seal this 18th day of August, 1741...¹

¹ Jean Pasteur, will, 16 November 1741, *York County Wills and Inventories Volume, Probate*, 19:65.

Jean Pasteur is representative of many successful men who immigrated to Virginia during the eighteenth century. Pasteur was a French Huguenot from Geneva who arrived in 1700. He followed the trades of wigmaker and barber in Williamsburg, becoming moderately successful. His son William later gained the title of surgeon, and married the daughter of the president of the College of William and Mary. His son Blovet took over the family business of peruke making. Both sons played prominent political roles in Williamsburg during the Revolutionary period, and both were quite successful in their endeavors, marrying into the prominent families of Williamsburg.² Jean's will contains wording common to other wills written by men and women of his social class. Jean states his geographic location and his profession. He then acknowledges that he is going to die soon and charges his wife Martha and his friends William Prentis and Mark Cosby to provide Christian burial after his death, and also charges them to execute his last wishes for the future of his estate. This will, like most written during the colonial period in Virginia, follows the format of declaring its creator mentally competent and providing broad directions for his burial, trusting his executors to make the necessary accommodations.

Wills like the one written by Jean show several aspects of colonial life. They make references to the social, political, religious, personal, and economic domains of past lives. A mode of testation Jean chose not to employ was entailing the land he had accumulated in Charles City County to his friend Thomas Johnson. This meant that Johnson would have only a life interest in this property, and that at his death the property would revert to Jean's heirs. In this case, the property would revert to his son James at

² *William & Mary Quarterly*, 3 (April, 1895): 274.

Thomas's death. Recent historiographical debates as to the relevance of entail in Virginia have challenged historians' basic understanding of how property was passed between generations in colonial Virginia. However, to understand more fully what colony leaders were trying to accomplish by importing the English practice of primogeniture, and how legal cases were interpreted, the language contained in wills must be viewed in light of the culture that produced those documents. The format and language of Jean's will were not unique to his own testament—countless others across the colony followed a similar pattern, in structure and in content.

Similarities like these beg the question of the role of language in the wills. Most historians agree that the act of creating a will is a conservative act, one socially mandated for people of a certain social rank in the community.³ The general conservative nature of the language in the wills shows that Virginia land and property holdings remained relatively unchanged, even with the constant influx of immigrants of different ethnicities, sophistication of legal practices, changes in religious structures, and economic booms and busts.

Settling Virginia

Virginia was settled in stages by different peoples. Beginning in 1607, English Protestants began to settle the Chesapeake region. These earliest settlers struggled to gain a foothold in the Indians' land, and were ill equipped for the life of pioneers. However,

³ For an example, see Toby Ditz, *Property and Kinship: Inheritance in Early Connecticut, 1750-1820* (Princeton, 1986), 159; David Narrett, *Inheritance and Family Life in Colonial New York City* (Ithaca and Cooperstown, 1992), 4; 5.

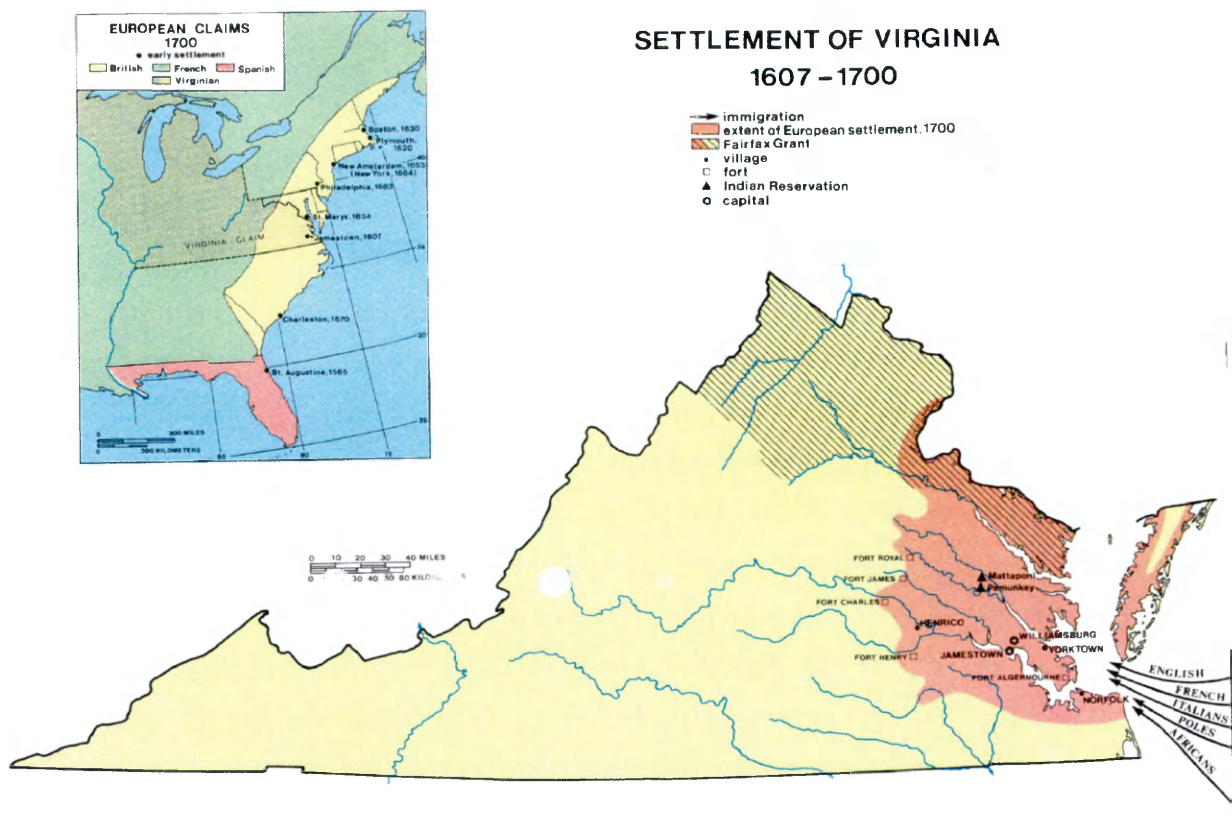


Figure 1. Reprinted by permission of Dr. Robert Morrill, The Virginia Geographic Alliance, *An Atlas of Virginia: The 17th, 18th, and Early 19th Centuries* (Dubuque, 1989), 20.

immigration continued to the American colonies with religious groups and the growing tobacco economy of Virginia. By the early eighteenth century, the Piedmont region of Virginia was settled up to the Blue Ridge Mountains. The next influx of settlers came from the port city of Philadelphia. Palatine and Scots-Irish immigrants populated the Valley of Virginia by traveling up the valley through gaps in the mountains in southern Pennsylvania and Maryland.⁴ Both sets of immigrants developed close-knit economic and religious communities. One major difference between the settlement of the Valley

⁴ Robert D. Mitchell, *Commercialism and Frontier: Perspectives on the Early Shenandoah Valley* (Charlottesville, 1977), 31-36.

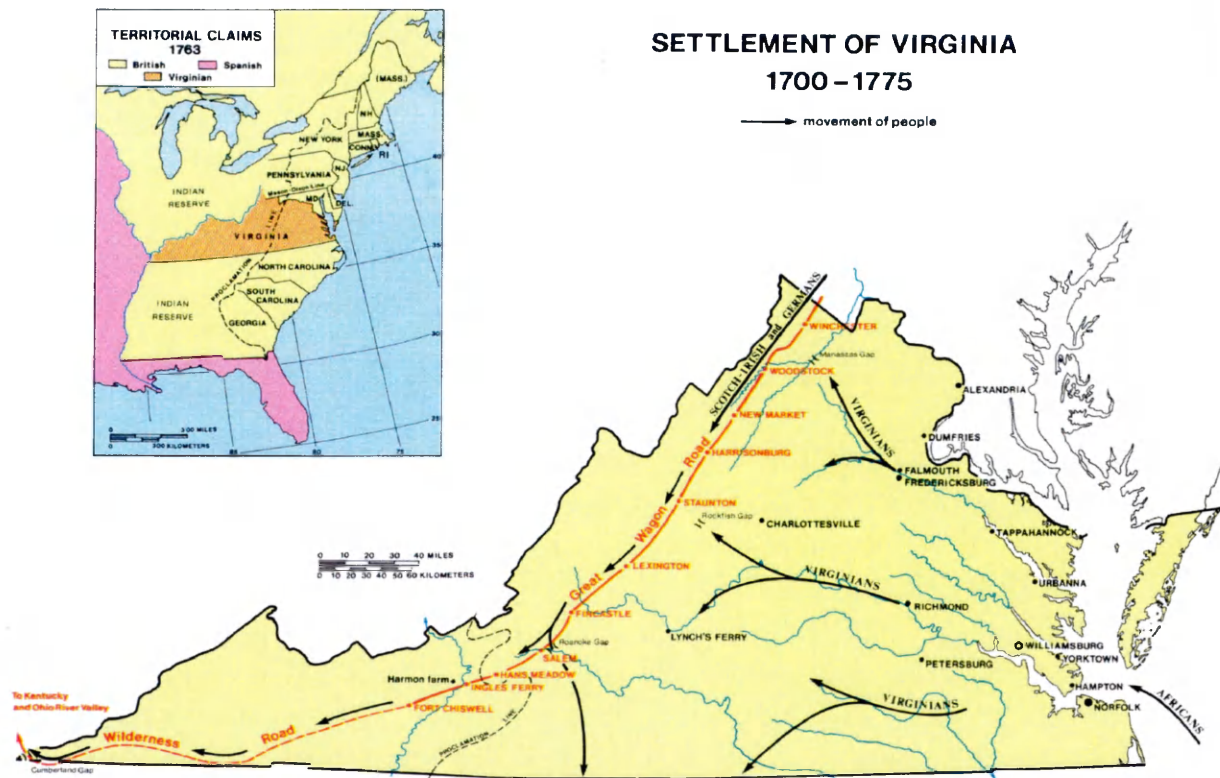


Figure 2. Reprinted by permission of Dr. Robert Morrill, The Virginia Geographic Alliance, *An Atlas of Virginia* (Dubuque, 1989), 21.

and the Chesapeake and Piedmont was that families settled the Valley. More often than not, individuals moved to the Chesapeake in search of riches. However, during the period in which the Valley was settled, Virginia's plantation economy had moved from its dependency upon indentured servant labor to slave labor. This produced less demand for individual white immigrants to Virginia and allowed more families to settle the backcountry.⁵

⁵ Darrett B. and Anita Rutman, *A Place in Time: Middlesex County, Virginia, 1650-1750* (New York, 1984), 47.

The economies of the backcountry and the Chesapeake were also markedly different before the Revolutionary era, but they became more homogeneous after the Revolution. The alluvial soil of the Valley offered some of the best farming soil in the

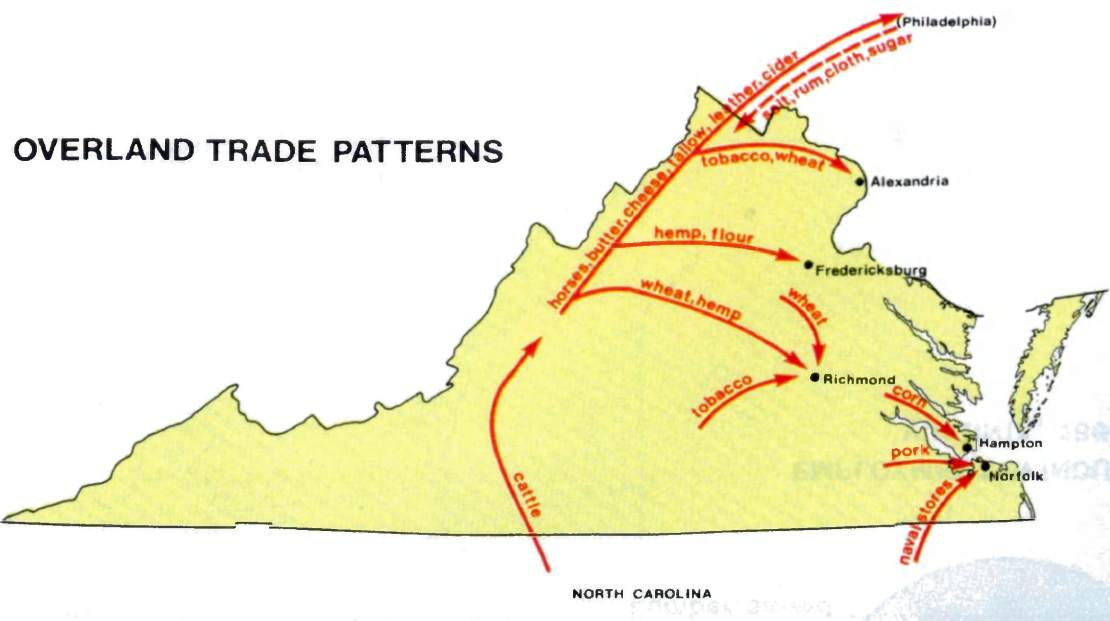


Figure 3. This maps Reprinted by permission of Dr. Robert Morrill, The Virginia Geographic Alliance, *An Atlas of Virginia* (Dubuque, 1989), 22.

colony.⁶ Grains and hemp were grown and transported east via distribution channels to port cities, then distributed to the far reaches of the English empire under its mercantile system. Animal husbandry was another source of income in the backcountry. Cattle, buffalo, horses, sheep, and other animals were all integral parts of the economy. The marked difference, however, between the economies of the two regions was in their relative access to foreign markets. Most of the crops grown in the Valley supported the local economy since backcountry farmers had to travel greater distances to reach

⁶ Warren Hofstra, "These Fine Prospects: Frederick County, Virginia, 1738-1840," Ph.D. dissertation, University of Virginia, 1985, 115.

distribution channels in the east.⁷ In the Chesapeake, tobacco played a defining role in the economy. Tobacco grew well in the early years of Virginia's settlement, but quickly robbed the soil of the nutrients needed to sustain long-term production of the crop. Hence, more and more land in the Chesapeake was dedicated to the cultivation of tobacco, whose labor demands were filled by slave labor. A general shift toward staple crops developed during the late eighteenth century in the Chesapeake because of the volatility of the tobacco economy. However, the most successful planters were those who supplemented their incomes with careers as lawyers, merchants, and land speculators. These were the men who became Virginia's most successful and powerful planter elite.⁸

The settlement of York County began in the 1630s when Virginia's governor John Harvey offered settlers fifty acres to inhabit the Chiskiack region of the York River and Middle Plantation on the middle peninsula. Settlement of Middle Plantation was seen as strategic to the defense of the western frontier of the colony as Virginia lawmakers endeavored to protect their flanks. Chiskiack, on the other hand, was an offensive site because it was in a good location from which to attack Indian settlements on the north side of the York.⁹ A steady flow of mostly English immigrants, and the movement of Virginia's colonial capital to Williamsburg, contributed to the nearly 5,500 people inhabiting York County's 106 square miles by 1776.¹⁰

⁷ Mitchell, *Commercialism and Frontier*, 156-160.

⁸ Aubrey C. Land, "Economic Base and Social Structure: The Northern Chesapeake in the Eighteenth Century," *Journal of Economic History* 25 (December 1965): 645.

⁹ Caroline Julia Richter, "A Community and Its Neighborhoods: Charles, York County, Virginia, 1630-1740," Ph.D., diss., College of William and Mary, 1992, 8-29; see also Gary Nash, *Red, White, & Black: The Peoples of North America* (Englewood Cliffs, 1992), 62.

¹⁰ In "More Than Her 'Thirds': Wives and Widows in Colonial Virginia," Linda E. Speth and Alison Duncan Hirsch, *Women, Family, and Community in Colonial America* (New York, 1983), Linda Speth

The majority of the men and women who lived in Maryland and Virginia during the seventeenth century were born and raised in England, with most of the immigrants serving indentures to pay their way across the Atlantic.¹¹ These indentures typically lasted for seven years but could be expanded for any number of reasons including pregnancy and running away.¹² Once men and women relocated to York County, they were greeted with a diverse lowland topography. York County sits approximately halfway up the middle peninsula on the northern side and is approximately 106 square miles. Its northern border is made by the York River. It is bounded to the east by Elizabeth City County, on the south by Warwick and James City Counties, and on the west by New Kent County. The soil in York County ranges from lowland marsh in the southeastern portion of the county, which is unsuitable for agriculture, to highly desirable alluvial soils in the northwestern portion. There were also differences in the access to

discusses the use of population estimation. Her note is as follows: "Hening, ed., *Statutes*, 4:467-68. No records accurately and completely indicate population size of any eighteenth-century Virginia country prior to the Federal Census of 1790. Virginia historians usually estimate the colonial population size and growth by using a county's tithable or tax list. According to Virginia law, taxes were levied on every black slave and white male over sixteen. According to the formula suggested by Governor Robert Dinwiddie in 1756, white tithables are multiplied by 4, black tithables by 2, and the totals are added together to estimate the size of the population. *Robert Dinwiddie, The Official Records of Robert Dinwiddie, Lieutenant Governor of the Colony of Virginia, 1751-1758*, 2 vols., ed. R.A. Brock (Richmond, 1883-1884), 2:353. The difficulties in using tithable records are described in Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1975), pp.395-444," endnotes. Using this formula, York County tax estimates are easily calculated. The 1784 York County Tax List shows 390 white tithables and 2,048 slave tithables. $(390 \times 4) + (2,048 \times 2) = 5,656$. This minimal population estimate shows a population density for York County of 53 people per square mile, with slaves constituting 72 percent of the population, by 1784. *Urban Culture Atlas*, "York County Personal Property Tax List, 1784," compiled by Julie Richter, Colonial Williamsburg Foundation.

¹¹ James Horn, "Adapting to a New World: A Comparative Study of Local Society in England and Maryland, 1650-1700," in *Colonial Chesapeake Society*, Lois Green Carr, Philip D. Morgan, and Jean B. Russo (Chapel Hill, 1988), 133; see Table 6 and Table 7; see Russell R. Menard, "British Migration to the Chesapeake Colonies in the Seventeenth Century," in *Colonial Chesapeake Society*, 120, 124, for a comparison of free immigrants and indentured immigrants to Maryland in the seventeenth century. According to these tables, 95 percent of the immigrants to Maryland in the late seventeenth century made their way there with an indenture. This general pattern of immigration is thought to have been relevant throughout the Chesapeake region.

¹² Oren Morton, *A History of Rockbridge County, Virginia* (Baltimore, 1973), 32.

waterways and high ground in the county that had an economic impact on the inhabitants, creating economic regions within the county, which also influenced the development of the county's infrastructure.¹³

In contrast to the development of York County, Rockbridge County was carved from Augusta and Botetourt counties in 1777.¹⁴ However, settlement of the region began in 1737 when Benjamin Borden was granted 92,100 acres of land from the House of Burgesses. The first white families settled in what is known as Timber Ridge, a community in the northeastern portion of the county. Unlike the settlement of York County, land allocations in the Valley of Virginia were made in the form of patents and grants to land speculators. These individuals were then responsible for attracting settlers to the area. Borden's 144-square-mile grant stretched along the South River from Beverley Manor in present-day Augusta County to just southwest of the Maury River in present-day Rockbridge County.¹⁵ After receiving title to the land, Borden made his way to Beverley Manor where he encountered John McDowell and his family. Borden persuaded McDowell to help survey this new grant in exchange for 1,000 acres of land. After the survey, speculator John McDowell settled his family at Timber Ridge.¹⁶

As Borden had hoped, many immigrants followed the McDowells' lead to the land newly opened for settlement, thus expanding the population and diversity of

¹³ Richter, "A Community and Its Neighborhoods," 77-78.

¹⁴ See Map 3; "An act for forming several new counties, and reforming the boundaries of two others," in William Waller Henings, comp., *The Statutes at Large, Being a Collection of All the Laws of Virginia* (13 vols., Richmond, 1809-23), 9:420-26 (October 1777).

¹⁵ See Map 3 on page 47.

¹⁶ Mary Elizabeth McDowell Greenlee, deposition, 10 November 1806, transcribed in William Couper, *History of the Shenandoah Valley* 3 vols. (New York, 1952), 3:274.

Virginia's frontier. The reason for the actual creation of Rockbridge County is a subject of some debate. There is a legend that the murder of an Indian chief name Cornstalk created the need for the county. The story goes that since the men who carried out the murder in 1776 would be tried in another area, some fifty miles from where the events took place, there was a greater chance that they would be found guilty and hanged. Knowing that the county leaders wanted to be rid of Cornstalk and the threat Indians posed to settlers at the time, county leaders pushed for the creation of a new county.¹⁷ It is doubtful that this is true since there is little evidence to support this story, but it adds a colorful sidelight to the development of backcountry communities. It is more probable that the population density of the area had grown to the point where a separate county government was needed. According to the 1778 tax records, the population had reached nearly 4,000 people dispersed over its 593-square-miles.¹⁸ While certainly in a less land-poor environment than contemporaries in York County found themselves, fathers in Rockbridge County found it increasingly difficult to purchase adjacent lands for their children as settlement continued, with up to 67 percent of the people occupying the land as tenants.¹⁹

¹⁷ See *Cornstalk and Rockbridge* by Angela Ruley, 17 December 1991, <http://www.rootsweb.com/~varockbr/blazrock.htm#Cornstalk>.

¹⁸ The ethnic identities of these immigrants included German, English, and Irish settlers. For a more complete description of the settlement patterns in the Valley of Virginia, see Mitchell, *Commercialism and Frontier*: for a discussion on how these people settled the area see Warren Hofstra, "These Fine Prospects: Frederick County, Virginia, 1738-1840," Ph.D., diss, University of Virginia, 1985, especially 203-43; Rutman and Rutman, *A Place in Time*, 47-48. Using the Rockbridge County tithables list of 1778, 679 white tithables are found with 495 other tithables. Knowing there were slaves in Rockbridge County, but not how many of these other tithables were slaves, the population falls somewhere between $(679 \times 4) + (495 \times 2) = 3,706$ and $(1,174 \times 4) = 4,696$ with a mean of 4,201. The population density is around seven people per square mile, but slaves comprised significantly less of the population than in York County; Morten, *A History of Rockbridge County Virginia*, 1.

¹⁹ Turk McCleskey, "Shadow Land: Provisional Real Estate Claims and Anglo-American Settlement in Southwestern Virginia," in David Colin Crass, Steven D. Smith, Martha A. Zierden and Richard D. Brooks,

The most striking thing about the development of these two counties is the relative homogeneity of their legal parlance. Even taking into consideration that all county clerks were trained in Williamsburg until the Revolution, the legal documents drafted by individuals in both regions followed a basic format as “each new county court clerk carried his copy book of legal forms and his knowledge with him to the frontier”.²⁰ Separated by nearly two-hundred miles, settled by immigrants from different ethnic, religious, and economic backgrounds, wills written in these two counties follow the same structures and conventions, changing little over time.

Virginia Society

Wills such as the one left by Jean Pasteur are an imprint of how families dispersed their most cherished possessions. Significant to an analysis of bequest patterns is an examination not only of legal precedents but of how culture played a defining role in shaping how women and men left property to their progeny. Without a basic understanding of the culture people shared, content analysis of wills and inventories loses an important human aspect.²¹ While it is difficult to humanize quantitative studies, placing individuals within the context of the larger society helps add this personal element to the history of the people being studied. Recalling that the information gained from a quantitative style of analysis is descriptive of no single person but a model of an “ideal” or “average” person,

eds., *The Southern Colonial Backcountry: Interdisciplinary Perspectives on Frontier Communities* (Knoxville, 1998), 64, found that the increase of land prices made it increasingly difficult for men to purchase multiple tracts of land to maintain their progeny in close vicinity for the sharing of agricultural tools. See also Robert Gross, *The Minutemen and Their World* (New York, 1976), 85; Gordon Wood, *The Radicalism of the American Revolution* (New York, 1991), 47.

²⁰ John Hemphill, *Wheels of Government and the Machinery of Justice in the First Capitol* (Colonial Williamsburg Foundation, 1987), 25.

²¹ For a detailed explanation of the methodology of content analysis, see Gilbert Shapiro and John Markoff, *Revolutionary Demands: A Content Analysis of the Cahiers de Doléances of 1789* (Stanford, 1998), 17-32.

topics such as the social and economic standing of the subjects set the background for an analysis of how wills were drafted and executed in the colonial era.

Colonial Virginia was a highly structured, competitive, hierarchical society. The prolonged influx of settlers into Virginia from varied socio-economic backgrounds provided a base from which a social hierarchy could evolve.²² A critical difference in the pattern of social development in the Chesapeake and other British colonies, however, was the economic power of its inhabitants. Virginia was the most prosperous of the early American colonies, with ambitious settlers, most from the elite social class who entertained little chance of inheriting their fathers' entailed estates in England. Other immigrants included male explorers and businessmen, female and male indentured servants, criminal servants, and slaves who added important labor to the growing tobacco economy. Most of the European immigrants were Anglican Protestants who in immigrating to the Americas assumed a secondary responsibility for Christianizing Indians in their efforts to tame the wilderness.²³

The English approached colonization in the Americas with an idea that there were degrees of civilization, of which they were the apex. English settlers compared societies they encountered in their expeditions to the New World to their own, using what they believed to be civil as their litmus test for other cultures. The English believed they were

²² For a more comprehensive analysis of the competitive nature of colonial Virginia, see Rhys Issac, *The Transformation of Virginia, 1740-1790* (Chapel Hill, 1982), esp. 18-42.

²³ See James Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill, 1994), 17-77 for a more complete description of English immigration to Tidewater Virginia; Morton, *History of Rockbridge County*, 32; James H. Merrell, *The Indian's New World: Catawbas and their Neighbors From European Contact Through the Era of Removal* (Chapel Hill, 1989), 80, 89, 240-42; for reasons on why missions failed to have much impact upon the Indian population, see James Axtell, *After Columbus: Essays in the Ethnohistory of Colonial North America* (New York, 1988), 87-88, 98.

far superior to the Indians they encountered in Virginia because they were Christians. Additionally, many of these colonists had received formal educations in England. During the colonial era, formal education on the English model played an important role in the colonies, at least for elite members of society. The College of William and Mary was founded in 1693 as one avenue of education for men who lived in the Chesapeake, and helped “cultivate a richer public life, and attempted to make existing political and religious institutions more vigorous.”²⁴ Further inland, institutions like Hampton Sydney College and Augusta Academy (1776 and 1749 respectively) sprouted up to give the young men living in the Virginia Backcountry access to education as well. However, a more prestigious route was returning to England to receive an education. Since few people were able to finance such undertakings for their children, those who returned from England with an education played prominent roles in Virginia society before the American Revolution. This increased access to education was part of a larger effort to bring “legal, inheritance, and religious practices into closer conformity with those in Britain and thereby eliminating many of the ‘creolisms’ that had formerly made those practices both more simple and more flexible than those” in England.²⁵

While education was a central factor in the development of social hierarchy in Virginia, social ranking also manifested itself in the architecture of public and private buildings, the way women and men dressed, how they carried themselves in the public’s

²⁴ Jack P. Greene, *Pursuits of Happiness: The Social Development of Early Modern British Colonies and the Formation of American Culture* (Chapel Hill, 1988), 85.

²⁵ *Ibid.*, 93. For further discussions of the role of education in the American colonies see Green, *Pursuits of Happiness*, 23-24, 149; Isaac, *The Transformation of Virginia*, 117, 125-127, 130, 195, 202, 238-39, 286.

eye, their leadership skills, religious affiliation, and to a lesser extent, personal wealth.²⁶

These factors determined one's social place in the hierarchy and served to promote segregation not only between social classes but between ethnic and religious groups, creating a complex society. Not everyone in Virginia was expected to participate in matters of government; in fact it was expected that everyone knew their station in life and would not meddle in affairs that were above it. Competition between social groups was nearly unheard of, but competition between men of the same social class was common, which sometimes resulted in political, and sometimes physical, fighting. The complexities of Virginia's social order were conveyed not only in the life experiences of individuals but also at the death of parents through the testaments people left to their heirs. Thus the wills people left reflected the general stability of the society in which they lived. That the language of testaments did not change dramatically over time and place reflects Virginian's desire to maintain the social, political, and economic order of the colony.

²⁶ Isaac, *The Transformation of Virginia*, 43, 70, 100, 105-106, 110, 118. For an analysis of genteel circles in the American colonies, see David S. Shields, *Civil Tongues and Polite Letters in British America* (Chapel Hill, 1997), 242, 276-85.

CHAPTER II

IN THE NAME OF GOD, AMEN

Wills have provided historians with an idea of what material possessions were important to the culture being studied and how each heir played a role in the continuation of the society. However, it has been an over-simplified assumption that men received land while women received complements to land.¹ While the land women and men received at their parents' death was certainly important to their livelihoods, another critical asset to farmers was the labor needed to work it. The Virginia Chesapeake and backcountry had very different modes of harvest because of their access to (or lack of) labor. As in New England, nuclear families and informal communal bonds of reciprocity supplied Rockbridge County's labor needs. Farmers helped one another plant and harvest their crops in a way that resembled a social event more than arduous labor. In a simplified contrast, these communal bonds did not exist on the expansive slave labor driven plantations of York County.²

The communal bonds practiced in York County, however, came not so much from English peers as from slave "inferiors" on Chesapeake plantations. York County's overwhelmingly slave population allowed white planters to grow labor-intensive crops

¹ Jean Butenhoff Lee, "Land and Labor: Parental Bequest Practices in Charles County, Maryland, 1732-1783," in *Colonial Chesapeake Society*, Lois Green Carr, Philip D. Morgan, and Jean B. Russo, eds. (Chapel Hill, 1988), 306-307.

² For the effects agricultural exhaustion had on New England, see Robert A. Gross, *The Minutemen and Their World* (New York, 1976), 87-88; for a description of the antecedents of these communal forms of harvest in medieval England, see Barbara Hanawalt, *The Ties That Bind: Peasant Families in Medieval England* (New York, 1986), 48-52.

like tobacco.³ In Rockbridge County, by contrast, the fertile, alluvial valleys were better suited to cereal grains. While the people who provided labor in both areas were different, indentured servants—but more commonly slaves—were willed to heirs to improve a young family's economic position in both areas. In York County, and to a lesser extent Rockbridge, this labor supplemented the reciprocity bonds that were found in other regions of the colonies.⁴

Colonial Legal Precepts: An Introduction to English Land and Testation Law

Colonial American common law was based on English common law, but adapted for a land-rich, labor-poor society.⁵ While the Virginia's colonial laws were based on American understanding of English systems, scholars generally agree that a loose interpretation of Sir William Blackstone's *Commentaries on the Laws of England* applied in the American colonies in the seventeenth and eighteenth centuries.⁶ With Blackstone's commentaries providing a basis for colonial law before the Revolution, it is understood that interpretations of common law in America evolved and matured as the American colonies grew. Changes in common law, especially in regard to inheritance practices,

³ For a discussion of the human capital investment needed to start rice and tobacco plantations, see Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill, 1998), 35-58.

⁴ Daniel Blake Smith, *Inside the Great House: Planter Family Life in the Eighteenth-Century Chesapeake Society* (Ithaca: Cornell University Press, 1980), 178-230; Carol Stack, *Call to Home: African Americans Reclaim the Rural South* (New York: Basic Books, 1996), 2, 105-106, 107-121, discusses reciprocity bonds, or "kinwork" as she coins it, in the American rural South.

⁵ Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill, 1986), 4; Turk McCleskey, "Rich Lands, Poor Prospects: Real Estate and the Formation of a Social Elite in Augusta County, Virginia, 1738-1770," *Virginia Magazine of History and Biography* 98 (July 1990), 449-50

⁶ Brewer, "Entailing Aristocracy in Colonial Virginia," (April 1997): 311.

were done on the side, mainly to change the implementation of testaments, and not the actual process of inheritance.⁷

Virginia's social hierarchy was based on the idea that land equaled power—the more land one accrued, the greater the reach of one's influence within the family; the greater the degree of patriarchy practiced within the family, presumably, the wealthier and more prestigious one was in society.⁸ Because land was so important in the social structure of Virginia, complex sets of laws were developed to protect the perpetuation of this hierarchy. Land in Virginia could be held in both *fee simple* and *fee tail* (or *taille*). These terms were derived from medieval concepts of land usage. A *fee* refers to a *feodum*, or an estate of land, an inherited or heritable estate of land, or simply moveable property. *Simple* refers to the basic, or complete ownership of land by one person and his or her heirs forever, without limitation. *Tail*, on the other hand, refers to the ownership of land with limitations to a specific class of heirs who can own the land. Heirs who were bequeathed land held *fee tail* inherited only a life interest in the property, unlike *fee simple* landholders who received total ownership of that property. *Fee simple* holdings could be bequeathed to anyone, with or without limitations on future heirs, and used to settle debts. However, property held in *fee tail* had to be passed entailed in the succession of heirs of a family, usually the first-born male heirs, and could not be sold or given to anyone outside this family lineage. This lineage pattern was called *primogeniture*. Because of *fee tail* restrictions, land was unable to be used as collateral for debts or be taken by creditors. For instance, if a father bequeathed land *fee tail* to his oldest son, and

⁷ Stanley Katz, "Republicanism and the Law of Inheritance in the American Revolutionary Era," *Michigan Law Review* 76 (1977), 11.

that son died with no male heirs, the land would revert to the next oldest male heir of the father, be that another son or the father's brother. To further complicate entailed land, if a father bequeathed land entailed to a friend or neighbor, when that neighbor died, that land reverted to the oldest male heir of the original owner.⁹

There is significant similarity in the wording of the root definition of the two types of land ownership in the *Oxford English Dictionary*, and in how legal scholars at the time interpreted these acts. Both referenced future heirs, but the main difference between the two forms of ownership was the restrictions placed upon a certain class of heirs and their ability to do as they wish with this property. If a father wished for a particular heir to own a piece of property, and believed that heir might be in some way unable to keep the property, he might entail the property to protect the heir and his or her family, from creditors. This served the purpose of ensuring heirs a place to live.

There is, however, another interpretation of why fathers would entail property to their progeny: when a family head committed financially to his family's well being, he did so for the good of the family. Since the good of the family was more important than the passage of land to a particular heir, no one person in the family could claim the land, which followed *primogeniture* precedents as English law had provided since the Middle Ages. By relying on this form of testation, Virginia men could more easily guarantee their family's survival, thus ensuring their patriarchal status in the new world. This functionalist interpretation states that "under intestacy laws all daughters and younger sons received smaller shares than the eldest son, that testators could disinherit any or all

⁸ Isaac, *The Transformation of Virginia*, 132; Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs* (Chapel Hill, 1996), 4-5.

⁹ "Fee," *Oxford English Dictionary*; "fee-simple," *OED*; "fee-taille," *OED*; "entail," *OED*.

children in a will, and that married women had only limited inheritance rights, in the form of a one-third share of family realty, and had no will-making powers. But all this was for the good of the family, and did not produce much inequality” among heirs.¹⁰

Varying interpretations of why these legal precedents were continued from the medieval era to the colonial era stem from how historians viewed the society that implemented these terms in individual wills. For example, in Virginia, the phrase “I give and bequeath 100 acres to my neighbor Nicholas Trott” would transfer ownership of one-hundred acres of land, formerly held by the testator, to his neighbor for his life only; it would then revert to the next lineal male heir of the original testator of the property.¹¹ However, this same phrase in the city of New York, which followed Dutch-Roman law, would mean the property was owned outright by the heir.¹² For that property to remain in his neighbor’s hands in Virginia, the testator had to include the clause, “to him and his heirs forever.” However, this produced a set of restrictions upon the recipient of the property. With the clause added to a bequest, the property became entailed, and “once land was entailed, no heir could sell it or bequeath it in a will.”¹³

The transfer of property held in *fee tail* could be done in several different ways: bequests could be restricted to male heirs only, female heirs only, or to a female heir but then the property would revert to her first male heir when he came of age. Testators chose

¹⁰ Carol Shammas, Marylynn Salmon, and Michel Dahlin, *Inheritance in America from Colonial Times to the Present* (New Brunswick, 1987).

¹¹ Elleanor Wheeler, will, 1660, *York County Wills and Inventories, Probate*, 3:78.

¹² Narrett, *Inheritance and Family Life in Colonial New York City*, 66; for a more detailed analysis of the differences of conveyances in the colonies, see Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill, 1986), 14-40.

¹³ Brewer, “Entailing Aristocracy” (April 1997), 313.

who they gave their property to based on many factors—who they felt deserved or needed property, and there were also social expectations as to who received certain properties.

The passage into adulthood for males in Virginia, as in all colonies in North America, necessitated the ownership, or the ability to rent, a piece of land that could support a family. This came at different times of life for different men; for most it came when their fathers died and passed land to them *fee tail* or *fee simple*. Typically, the first-born son received the home estate the father worked, while the other siblings received other property if the father was able to afford such parcels.¹⁴ The complication of providing for more than one son increased as the eighteenth century proceeded. With more immigrants moving to Virginia, land ownership became concentrated in the hands of the social elite as patriarchal systems concentrated on the accumulation of wealth.¹⁵ Tenants on land owned by large landholders could not afford to even own the land they farmed, let alone provide for their children's future. This was especially true as families began to populate the Valley of Virginia.¹⁶

Another important factor in this analysis is the distinction between types of property. All property could be held either *fee simple* or *fee tail*. The basic division of property types was both real and personal property. Real property encompasses property

¹⁴ Glen Deane, "Parents and Progeny: Inheritance and the Transition to Adulthood in Colonial North Carolina, 1680-1759," *History of the Family: An International Quarterly*, 1 (number 3): 356; also Arthur E. Imhof, in "From the Old Mortality Pattern to the New: Implications of a Radical Change from the Sixteenth to the Twentieth Century," *Bulletin of the History of Medicine*, 1985: 20 "the best years personally of the farmstead owners were simultaneously the years of the greatest social integration as well." The movement from childhood to adulthood and the acquisition of a farmstead also marked the point at which young men were formally integrated into society at large.

¹⁵ Isaac, *The Transformation of Virginia*, 21.

¹⁶ McCleskey, "Rich Land, Poor Prospects," 452.

associated with land, which helps form the term real estate in today's parlance. Personal property is all property other than land.

Forms of Bequests

While "there are as many ways to devise estates as there are minds to devise them," wills can generally be classified into three broad categories: impartible, partible, and preferential. Wills thus offer a snapshot of individual lives, revealing attitudes toward social organization with regard to real and personal property.¹⁷

Impartible bequests are undivided legacies; partible and preferential bequests split estates between heirs and include three subsets: *primogeniture*, *ultimogeniture*, and *unigeniture*. *Primogeniture* is the conveyance of all property to the first born, or oldest (usually male) heir; *ultimogeniture* is the conveyance of all property to the youngest heir; *unigeniture* is the conveyance of all property to a favorite heir who is not necessarily the oldest or youngest. A second form of bequest is a partible form in which legacies are divided among several heirs. Intestate decedents passed their property through primogeniture in Virginia until 1785, when intestacy laws were changed to a partible form of inheritance.¹⁸ A third method of conveyance, the preferential mode, was less common in the eighteenth century. Land in Virginia was still abundant in the late eighteenth century, but it sometimes meant that sons (and sometimes daughters) inherited land far away from their families. Instead of splitting family estates between multiple

¹⁷ Kenneth Koons, "Families and Farms in the Lower-Cumberland Valley of Southcentral Pennsylvania, 1850-1880." Doctor of Arts diss., Carnegie-Mellon University (1987), 230.

¹⁸ Hening, ed., "An act concerning wills; the distribution of intestate's estates; and the duty of executors and administrators," *Statutes at Large* 12:140-145 (October 1785); Brewer, "Entailing Aristocracy," 315; Katz, "Republicanism and the Law of Inheritance in the American Revolutionary Period," *Michigan Law Review*, 13.

heirs to keep estates intact, more often than not a “preferred” heir paid his or her siblings the market value for the land, buildings, animals, and farming implements on the estate. This allowed land to pass intact from one generation to the next while preserving an equal portion of the estate for each heir.¹⁹

Probate Records as a Source

Unfortunately for Virginia historians, colonial probate records for many counties did not survive the Civil War, for countless city and county records were lost when Union troops burned Richmond in 1865. The Library of Virginia has taken pains to collect as many of the surviving records as possible and to reproduce them on microfilm and more recently, in digital archives. The library’s archives include access to maps, private papers, architectural records, and local city and county records. However, the drawback to this site is that most of the information posted there is in the form of finding aids—scholars must still travel to Richmond to view much of their archive. Taking a different approach, the Colonial Williamsburg Foundation has launched a web project to digitize all of its seventeenth- and eighteenth-century archives for scholars around the world via its digital library. Projects such as these help preserve original documents while increasing the availability of original, archival documents.²⁰

Fortuitously, York County’s court records did not reach Richmond before the Civil War. Thus, York County is one of the few tidewater counties with extant pre-Civil

¹⁹ Carole Shammas, Marylynn Salmon, and Michel Dahlin, *Inheritance in America From Colonial Times to the Present*, 42.

²⁰ The majority of the data used in this analysis comes from the Library of Virginia and the Colonial Williamsburg Foundation. Colonial Williamsburg’s documents can be accessed at <http://www.PastPortal.com>; the Library of Virginia’s archive can be accessed at <http://www.lva.lib.va.us>.

War court records. Rockbridge County was also visited by Union troops during the Civil War, but they were more focused on disabling the Virginia Military Institute's ability to wage war than on the destruction of civil government. Hence, Rockbridge County's court records also escaped the war's ravages. The records from Rockbridge County are as rich and complete from 1776 through today as are York County's. Some historians assume that records from the backcountry were not kept as well as the records in tidewater. That all county clerks received the same training in Williamsburg until the close of the colonial era should suffice to dispel this assumption. While county clerks in the backcountry certainly had a larger area to serve, the populations they served were roughly the same size. Thus, backcountry probate records are a rich source that is only beginning to be tapped for scholarly analysis. York and Rockbridge counties, while at different stages of economic and political development in the late eighteenth century, offer an interesting contrast in social development when examining their extant wills and inventories while at the same time reinforcing the conservative and unchanging nature of testation.

Underregistration of Probate Records

While a relatively rich source of information, wills and inventories do not paint a complete picture of how eighteenth-century men and women transferred property, but rather how one group that left documents did. During the eighteenth century, slaves composed an ever-growing proportion of the population who could not construct legally binding documents, including testaments. Their only footprints in these documents are in the form of their bodies being appraised and/or bequeathed. Also missing from these probates records are people who either chose to follow common-law practices and to

allow their property to be given to their first-born male heir, those who did not own enough property to pass to their children, and those that died suddenly and could not draw a will. Hence, these documents are biased toward a specific portion of the county's population that met specific criteria for color, age, sex, social prestige, and wealth.²¹

As Table I shows, the degree of underregistration varied from 8.211 to 76.698, but averaged but averaged a factor of 28.427. This translates into more than half the population in York County not being registered in these court documents for various reasons.²² In Rockbridge County, underregistration in county records was higher, with an underregistration factor of around 70. The higher rate of underregistration is in part explained by the high degree of mobility to, and through, the area during the late eighteenth century. However, Holly Brewer's suggestion that shoddy record keeping was the case in the Virginia backcountry does not explain why there was a higher degree of underregistration in Rockbridge County than in York County. This period in Rockbridge's development was marked by war and does not show a completely accurate picture of what was occurring in the county. As far the people in Rockbridge were concerned, residents had a testation level of just over 80 percent.²³ In York County, a more curious phenomena took place; there were years in which wills were probated at a higher rate than inventories. This simply means that the estate of a testator was not always inventoried in a timely manner. Proof of this practice can be seen in Matthew

²¹ Daniel Scott Smith, "Underregistration and Bias in Probate Records: An Analysis of Data from Eighteenth-Century Hingham, Massachusetts," *William and Mary Quarterly* 32 (January 1975): 105-107.

²² See Appendix B; Smith, "Underregistration and Bias in Probate Records," 101-102.

²³ This statistic is calculated by dividing the total number of probated wills (B), multiplied by the total number of inventories taken during the span (C) and dividing this number by the total number that are in both records (A) $[(B \times C) / A]$.

Shields' case. The order to take an inventory of his estate was dated 16 June 1765, but was not entered into court until 21 July of the following year.²⁴

The knowledge that probate documents have a bias toward the wealthier portion of society is important so that historians can understand and correct for limitations in the documents.²⁵ Some people never appeared in any documents in Rockbridge and York counties, although they were clearly part of the local economy. However, one crucial difference between these people and people who left probated evidence is their standing in the community. Especially in the early development of Rockbridge County, community members were able to discriminate among potential inhabitants to the area. For example, land agents working on behalf of Benjamin Borden sold land to interested buyers. However, as many as two-thirds of the taxable males living in Augusta County, of which half of Rockbridge County was created, did not own the land they worked. This practice was part of a social filter that Virginia used to create homogenous, functioning communities that did not experience the drastic social upheavals that other colonies experienced. In Rockbridge County the process functioned as follows: a surveyor, acting on behalf of Benjamin Borden, worked out the specifics of a sale with a prospective "neighbor." The process could take considerable time, depending on how the surveyor viewed the potential member of the community. The time involved in formulating the deal for land enabled surveyors to observe the behavior of these men, and to exclude troublemakers and other less-than-desirable people from the community.²⁶ This filtering

²⁴ Matthew Shields, will, 21 July 1766, *York County Wills and Inventories Volume, Probate 21:282-285*.

²⁵ Smith, "Underregistration and Bias in Probate Records," 110.

²⁶ McCleskey, "Rich Land, Poor Prospects," 452.

apparatus enabled men in control of land sales to construct their communities with handpicked men and women of similar backgrounds. The people who were permitted to purchase land appeared likely to accept the Chesapeake's hierarchical communal and political structure as their community model. Thus, communities had the independence to develop culturally homogenous clusters; those who did not appear in Rockbridge County's records were more than likely people who did not fit the community standards of the majority of inhabitants, and easily fell through cracks in the legal system when they died. This, however, is not an indication of shoddy record keeping in the backcountry.

Wills

While biased, colonial probate records, such as wills and inventories, provide important information for social and economic historians. These documents show how women and men viewed their role in society, and give a pre-mortem view of the items both the heirs and the testator valued.²⁷ Equally important is the language conveying wealth to the next generation. Depending on who wrote the will, the language and style changed slightly, but on the whole changed very little over the course of the colonial period. Additionally, probated inventories are a post-mortem snapshot of the wealth the individual had, which varied wildly as values for personal property inflated and deflated over time. Inventories were usually certified by neighbors of the deceased after his or her death, then the executors of the will would distribute the wealth according to the will.

The act of creating a will forced women and men to confront their mortality while preparing the next generation to carry on the customs and traditions of the family, with

²⁷ Narrett, *Inheritance and Family Life in Colonial New York City*, 28.

written instructions about how the will should be executed. All wills began with a preamble that either identified the testators as of sound mind and body or as sick in body but of sound mind. The majority of wills in Rockbridge and York counties identified themselves in the latter manner, suggesting that most wills were written as the testator was facing death.²⁸ After testators established their mental state, they acknowledged their certain death and their wish to be buried in a Christian manner:

Praise be to God, Amen. This Twenty fo[u]rth Day of June one Thousand Seven Hundred and Eighty three I Henry McClung of Rockbridge County and State of Virginia being weak of Body but of sound mind and memory Cal[l]ing to mind the mortality of my body and that is appointed for all men once to Die Do make and ordain this appointed Will and Testament firs[t] I Recommend my Soul to God [w]ho Gave it and my body to the Grave to be buried at the Discretion of my Executors. Not Doubting but that the Will be united again by the mi[gh]ty Power of God at the Last Day and as for such Worldly Estate as it hath pleased God to Bless me with I give Bequeath and Dispose of in the fol[l]owing man[n]er:²⁹

Most testators willed that their just debts be paid with proceeds from the sale of personal property, using the residual of the sale for the funeral, which the testator almost always charged his executors to arrange. After the basic preamble, testators moved into specific devises among their heirs. In the presence of witnesses, the testator also named at least one executor to probate and carry out his wishes. For executors to carry out the wishes of the deceased, they needed to have access to the will. When it came time for them to write their own will, potential testators had ready access to the wills of relatives or friends on which to base their own testament. This helps explain the great consistency between wills written during the colonial period. For example, William Alexander, son of

²⁸ Narrett, *Inheritance and Family Life in Colonial New York City*, 34.

²⁹ Henry McClung, will, 4 May 1784, *Rockbridge County Will Book, Volume 1, Probate*, 199.

Archibald, one of the first inhabitants of Timber Ridge, modeled his own will after his father's, as seen in the italicized phrases following:

In the Name of God Amen I Archibald Alexander of the County of Rockbridge being in a weak Candition of body but perfect mind and Memory Thanks be to Almighty God and Calling to mind the Mortality of my Body do make this my Last Will and Testament – in Manner and form fallowing Principally I – give my Soul to God who gave it, Hoping – mercy – – Jesus Christ My Body I commit to the Dust to be buried in a Decent & Christian Manner ~

Such Worldly Estate as it have pleased God to Bless me with I leave and Dispose of in the following manner ~

First ~ I order that all my Just Debts and Funeral charges be paid out of my Estate . . .

*In the name of God amen I William Alexander of the town of Lexington county of Rockbridge and state of Virginia being in a low state of health but of perfect mind and memory and recollecting the mortality of my body and that it is appointed for all men once to die do therefore make and Order this my Last will and Testament (which is to take affect after my decease) hereby commend my Soul to God who gave it and my body to the dust from whence it Came not Doubting but that I will be raised at the Last day – and as to the worldly estate God has blessed me with I order and dispose of in the following manner Viz. I order my executors to pay the debts that I am justly owing as soon as possibly convien[en]t either out of the debts that are owing me or from the sale of the lands I shall order sold . . .*³⁰

Not only are the two wills from Rockbridge County strikingly similar, but they also follow the form of Eleanor Wheeler's will from York County, written in 1660:

In the Name of God Amen the 13th day of Aprill 1660 I Elleanr. Wheeler of the parish of Hampton in the County of Yorke in this] the Collony of Virginia Widdow Being weake and sicke of body but of sound & perfect Memory (praise be given to God for the same) yet considering the uncertainty of life here uppon Earth & being desirous to settle things in Order do hereby make my last will & Testamt in forme & manner following. That is to say First and principally I commend my soule unto Almighty God my Creat^r. assuredly beleiving that I shall receave pardon & Remission for all my Sinnes & be saved by the pretious death & meritts of my blessed Saviour & Redeemer Christ Jesus & my body to the

³⁰ Note: “–” denotes a word that was illegible in the will. See Archibald Alexander, will, *Rockbridge County Will Book Volume 1*, 74; William Alexander, will, *Rockbridge County Will Book Volume 2*, 14.

Earth from whence it was taken to be buried in such decent & X^{pian} manner as [t]o my Execut^r hereafter named shall thinke fitt. And touching that worldly Estate which itt hath pleased God to bestow uppon mee my meaning is that the same shall be Employed & bestowed as in this my will is hereafter Exprest...

These three wills all fit a similar pattern, even though there are minor embellishments to fit the personal situation of the individual. Differences in the text can also be accounted for by the fact that individuals could be named as executors in several wills. As a result, testators had access to alternative wills to draw upon when writing their own. These facts seem to contradict Brewer's conclusion that Virginians intentionally entailed so much property that nearly three-quarters of the colony was held *fee tail* by 1776. William's testament contains "entailing" language, though it was written in 1797 (twelve years after it was no longer legally binding). This suggests that the language constructing these wills was more a function of tradition, or failure to edit, than a conscious decision to keep property together with one heir.

The striking similarities in the language of these wills suggests that, in writing a will, not all tails were intentionally set, a fact strengthened by the wording of the writ of *ad quod damnum* (for the purpose of misfortune). This writ referring to "poor people seised in fee tail of small and inconsiderable parcels of land, often time ignorant, or not designed to be devised in tail by their ancestors" is strong proof of this.³¹ Additionally, books intended to help men with their legal affairs also contained advice for writing wills. For example, a legal advice book published in 1772, advised:

The construction of will sis [sic] more favoured in law than any other deed or conveyance, to fulfill the intent of the testator; because the testator is supposed to be *inops confilii*, and in a hurry, and a devise is not a conveyance by Common Law, but by the statute: the devises before the statute were by custom, and as custom enabled men to dispose of their

³¹ Hening, *Statutes at Large*, 4:399-400.

estates contrary to the conveyance from the regularity and propriety required in other conveyances; and thus it came to pass that wills upon the statute, in imitation of those by custom, gained such favourable construction. Words in wills are always construed according to the intention of the parties that make them, as near as can be collected; but the words and intent must agree with the law, and if the words are insensible and repugnant, they are void.³²

The author of this book goes even further in describing the process of testation, giving two examples of common wills, both of which contain language that passes land *fee tail* to heirs.³³

While the practice of entail was traditional for the Virginia elite, there is evidence that at least the wording was adopted by men with small estates. It was legal for small landholders to entail their land, a practice that could potentially keep small amounts of land entailed that could not sustain a family even though it was not necessarily the intention of the ancestor who bequeathed the land. The entailing of small parcels also had an adverse affect on the poor who, without the ability to sell their land, “must be confined to labour upon such small parcels of land, when, by selling them, they might be enabled to purchase slaves, or other lands more improveable.”³⁴ In 1743, the secretary of the colony of Virginia docked all land worth less than £200 with a writ of *ad quod damnum*. The exemption from entail this writ created affected property in different areas in different ways. A large amount of unimproved land might fall below the £200 qualification, especially the more removed it was from urban centers, while a relatively small land holding closer to the ocean might be subject to the law. It is not unreasonable

³² Giles Jacob, *Every man His Own Lawyer: or, A summary of the laws of England in a new and instructive method* (London, Printed by W. Strahan, and M. Woodfall, (1772), 254-55.

³³ *Ibid.*, 259-63. For a transcription of these examples, see Appendix C and D.

³⁴ Henning, *Statutes At Large*, 4:399-400 (August 1734).

then, to assume that there were tracts of land, especially in the backcountry, that were entailed but fell under the writ of *ad quod damnum*, with the tail never being enforced.³⁵ However, as the eighteenth century wore on, it became increasingly more difficult to find land that was valued under £200 due to inflation.³⁶

For larger tracts of land that were held *fee tail*, the only way to dock the entail was through a private act of the House of Burgesses. “Between 1711 and 1774 a total of one hundred and twenty-five such Acts were passed; nearly three-fourths of them for members of such leading families as the Armisteads, Beverleys, Braxtons, Burwells, Carters, Dandridges, Eppes, Pages, Tazewells, Wormelyes, Washingtons, and Yeates.”³⁷ The fact that the majority of docked land was litigated in the House of Burgesses points to a politicalization of entail. By tightening constraints on large landowners and their ability to dispose of land easily, only the most politically powerful were able dock their land held in *fee tail*. To obtain an act to dock land, men usually had to agree to hold other lands *fee tail*. While most docks were passed fairly easily when similar amounts of more convenient lands were entailed, it could be politically embarrassing for powerful men in Virginia who could not pass an act to change the status of their *fee tail* land to *fee simple*.

An analysis of the cumulative effect of entail is also particularly revealing of inconsistencies in the practice of holding land *fee tail*. An examination of over 1300 wills in York County from 1637 through 1811 and over 300 wills from Rockbridge County

³⁵ One scenario that has not been noted in Virginia is whether entail was enforced on unimproved land that was bequeathed with entailing language in a will and worth less than £200, but then appreciated in value after the death of the testator.

³⁶ See John J. McCusker, *How Much Is That in Real Money? A Historical Price Index for Use as a Deflator of Money Values in the Economy of the United States* (Worcester, 1992).

³⁷ Daniel J. Boorstin, *The Americans: The Colonial Experience* (New York, 1958), 120.

from 1778 through 1813 reveals that the use of the phrase, “to his/her heirs forever,” was used quite regularly to bequeath property of all sorts. Slaves, livestock, and personal items all were passed through the language of entail. Assuming (as Brewer does) that “the proportion of wills with entail provisions in a county is equal to the proportion of land entailed in that generation,” greatly exaggerates what was occurring.³⁸ Table III shows that by 1771 in York County, nearly all of the property in the county would have been held *fee tail* if this were the case. Once more, wills containing entailing provisions continued to contain this language after 1772 when the practice was no longer was legally binding; nearly one-third of all wills probated from 1772 through 1811 contained entail provisions. It is reasonable to assume that much of the property bequeathed with these entail provisions in them actually fell within the writ of *ad quom damnum* and were not legally subject to being held *fee tail*. Further research into the value of the items being bequeathed is necessary to accurately calculate how much property valued above the £200 mark was actually entailed.

Executing Wills

Executors had a considerable responsibility once they were appointed in a will. So many different types of people served as executors in York and Rockbridge that it is difficult to pinpoint all the factors that contributed to their selection.³⁹ Friends, family members, neighbors, close acquaintances, and community leaders all filled this role. In some cases, especially when a non-family member was chosen, some type of symbolic payment of a horse or a small parcel of land was given for their services in settling their

³⁸ Brewer, “Entailing Aristocracy,” 317.

³⁹ David Narrett also finds similar problems exacting why certain people were chosen to execute wills in *Inheritance and Family Life in Colonial New York City*, 185.

estate, which might last several years, especially if minors were involved. There was a great amount of reciprocity in these communities because “what men did for the children of others, they could hope other men would do for theirs” in respect to executing wills and caring for minor children.⁴⁰

Once a testator died, the executors were legally responsible for proving that the will was legally made to the county court clerk. A will written on paper was easily entered once the executors paid the clerk’s fee, but a nuncupative (oral) will was more difficult to prove. Witnesses were individually interviewed to establish the wishes of the deceased, but these types of wills usually needed to be heard by the court since witnesses sometimes had different memories about who was to receive what of the descendant’s estate.

After a will was proven to the county clerk, the court issued an order for the estate of the deceased to be inventoried. The resulting inventory of estate provides an important, quantifiable source for historians looking at wealth distribution. Inventories are a list of everything that was contained on the descendants real property and its approximate value; supposedly, the estate was to remain as it had at the death of the testator. However, it is not unreasonable to assume that during the usual time span between the appraisal being ordered and being entered in court (over a year in some cases), some effects would “walk off” with a hoarding heir or be distributed early by an executor. One of the most important commodities for these people was livestock, a commodity that changes yearly due to births and deaths, thus complicating the appraisal. When used in conjunction with wills, appraisals serve as a way to examine the wealth distribution among sexes.

⁴⁰ Ibid., 155; Rutman and Rutman, *A Place in Time*, 60.

For this analysis, the inspection of wealth distribution among the sexes occurs at the individual family level. Where wills show the wishes of the testator to distribute his or her wealth to certain individuals, inventory appraisals give an economic snapshot of how much that property was worth. In this light, one can draw conclusions as to the social and economic implications of testation.⁴¹

When appraisers took an inventory of a house, they went room by room. This feature helps in reconstructing how the house was organized. Much scholarship has been dedicated to mapping a man's realm outside the home, from early cartographic mapping to geological analysis. However, little attention has been paid to mapping what a woman's world looked like inside the house. Because many appraisers moved room to room, historians can get an idea of what different rooms in houses were used for. For example, James Mitchell's inventory, taken 20 July 1772, begins with the appraisal of slaves who most likely lived outside the house. Lawrence Smith, William Cary, and John Chisman then went to the upstairs rooms of Mitchell's house, moving next to "the large room next the Street below Stairs," then to the billiard room, the room next to the billiard room, then to the room next to the kitchen, the chamber, the passage, then to the cellar. The kitchen was next, and then the men went to the stable. In all, they accounted for £797.19.11 at the estate of John Mitchell, approximately five months after his death.⁴²

The appraisal of John Frederick Baker's York County estate in 1780, for example, listed 164 individual items. The first item was a bed, so it is fair to assume that the

⁴¹ Gloria Main, "Probate Records as a Source for Early American History," *WMQ*, 3rd ser. 32 (January, 1975): 91.

⁴² See James Mitchell, Inventory, *York County Wills and Inventories*, 22, 104-106. An electronic transcription of this inventory was created in August 2000 by Wayne Graham and can be found at <http://www.pastportal.com/archive/probates/PI0018.htm>.

appraisal began in a room that contained sleeping quarters. In fact, two more beds are listed with an equal number of bedsteads and bed furniture. The appraisers next seem to have moved into a living area, since seven chairs and a looking glass were noted. In a cooking area, laborsaving tools used by women were found—tea and coffee pots, dishes, cream ware, eating utensils, and other kitchenwares. A saddle, handsaw, and two guns on the list show that the home was not totally under female influence. After several more household items, the appraisers went outside to the field surrounding the home, where they counted two horses, a horse cart, two cows, a yearling, and a calf. Baker's entire estate amounted to £3,015.⁴³

John Baker bequeathed all of this property to his wife Margaret, who was to pass this property to their daughters Molly, Elizabeth, and Nelly after her death. While John gave all of his "household furniture & moveable affairs" to his wife, who was to act as the sole executrix, he bequeathed to his son William "my house & lot I now live on as soon as he shall come of age to receive it." William's sisters were to receive approximately £1,005 each, plus an additional £1,000 after his debts were paid; William, still a minor, was to receive his portion of his father's estate when he reached the age of majority. He seems to have been close to this age, for in 1784 this William Baker appears on the York County tax list responsible for paying taxes on himself, two horses, and ten cattle.⁴⁴

⁴³ More than likely, this inflated figure was due to the estate valuation being in Virginia paper currency, since the colonies had been at war with England for several years by this time.

⁴⁴ John Frederick Baker, will, 17 February 1780, *York County Will Book, Volume 22, Probate*, 491; Henry McClung, inventory, 17 July 1780, *Urban Culture Atlas*, Colonial Williamsburg Foundation; *Urban Culture Atlas*, "York County Personal Property Tax List, 1784," compiled by Julie Richter, Colonial Williamsburg Foundation.

William Baker seems to have been in a better economic position after receiving his inheritance than were his sisters. The horse listed in John's inventory was valued at £300, and the two cows, yearling, and calf at £360. William had two horses and ten cattle four years after his father's death. Assuming that the value of these items remained the same, William had £1,500 tied up in these animals, putting him at an economic advantage over his sisters when coupled with the value of the estate he had inherited. Thus, it seems in this case that the male heir of John Frederick Baker fared better than his sisters, even though he received only land, because of the fact that the livestock he received were appreciable commodities.

The disparity between the siblings is easily explained through the language of the testament. John mentioned his daughters by their first names, indicating they were still unmarried. If they were married, the first and last name would surely have been used to distinguish them. Hence, the money and moveable property they received from their father probably functioned as their dowry. Since a woman helped complete the marriage equation, the items brought with her through her dowry helped strengthen the new family's position in the community. Much as a husband brought land that established the social position of his wife, a wife brought to the marriage a dowry that matched the social status of the bridegroom. Further, dowry items were needed for the daily management of a household. Kitchen furnishings used for preparing food cannot be ignored; neither can the process of adding labor to the farm or plantation with children. While dowries in monetary terms may not have been as valuable as the land families lived on, they were critical, if sometimes intangible, components of these people's lives. However, in some cases, especially when labor was included in dowries, the value of the items a woman

brought to a marriage exceeded the value of the land her husband brought. The absolute and potential value of an African slave or indentured servant was many times the value of the relatively inexpensive land that was being transferred in late eighteenth-century Virginia.⁴⁵

⁴⁵ Lee, "Land and Labor," *Colonial Chesapeake Society*, 340; Glenn Deane, "Parents and Progeny: Inheritance and the Transition to Adulthood in Colonial North Carolina, 1680-1759," *History of the Family* 1:3 (1996), 364.

CHAPTER III

CONCLUSION

When European settlers first inhabited York Count in the 1630s, these inhabitants were on the edge of Virginia's colonial frontier. So, too, were Rockbridge County migrants a century later. At first glance, these regions reflect the drive and ambition Frederick Jackson Turner spoke of in *The Frontier in American History*. Like other frontiers, Rockbridge and York counties were at "the outer edge of the wave—the meeting point between savagery and civilization."¹ Today, historians understand the frontier to be both a place and a process.² Nevertheless, Turner's work on the frontier's place in history is important in that it tells us something about how peoples who would become Americans viewed themselves, their actions, and where they came from in the late nineteenth century. For English America, the transition from frontier to established settlements began in Tidewater counties moving ever westward for nearly two hundred years.

Wills left by decedents in these areas provide important clues about community and generational relationships. Wills suggest certain modes of thinking in the ways generations and families interacted with one another. The wealth distribution and individual family experience in communities are two areas to which wills provide valuable clues. As economic conditions changed, so did the lives of individual families. Agrarian economic culture changed from hemp to wheat production in Rockbridge County, while York County remained enmeshed in the Atlantic tobacco trade. While this economic shift occurred, the political climate was also changing for all people in the American colonies. For people of

¹ Frederick Jackson Turner, *The Frontier in American History*, (New York: Hold, Rinehart, and Winston, 1920), 2-4.

² See Bernard Bailyn, *The Peopling of British North America: An Introduction* (New York, 1986).

Scottish, German, English, Indian, and a host of other ancestries, the political climate of the Revolutionary period saw the loyalties of colonies change from the crown of England to the American confederacy of the early republic.

While the economic, familial, and political climate changed in the colonies, the way in which wills were written and executed remained surprisingly unchanged. Eighteenth-century testation practices followed precedents established in the seventeenth century, which were based on English common law. The relative peace among social strata was one reason for the relative stability of the institution of testation. It was not until the upheaval of the Revolution that the laws that dealt with how property was passed were radically rewritten. Another reason for the relative stability of the testation process was testators' access to documents that aided in the construction of new wills. Older wills used feudal ideals of land ownership and transferal that were seen in Virginia as integral parts of family life. By adopting the language contained in these documents, younger testators were assured a more socially stable neighborhood than may have otherwise been feasible.

Because the devise of land from one generation to the next is one of the most important reasons for testation, children tended to benefit the most from such legacies. Post-mortem bequests of land, however, were only one such mode of conveyance of property to the next generation. Lifetime conveyances allowed children to commence independent lives at a much earlier age. Yet many fathers retained control of their sons' (and to a lesser extent, daughters') land until their death. By maintaining control of the land their children worked, fathers strengthened familial bonds in Virginia on the patriarchal model. This control continued even after the practice of primogeniture was ended in 1785. Primogeniture had been very important in keeping large tracts of land

intact in the feudal system in England, but in the open expanse of the American frontier, the practice became more of an impediment than aid in keeping estates intact.

Evidence seen in this limited case study of two counties in colonial Virginia suggests that Brewer's conclusions on entail in Virginia need to be studied further. By limiting her analysis to the top one percent of Virginia's colonial population, she grossly overestimates the effect of entail in Virginia. Moreover, crediting the differences between Tidewater and backcountry Virginia's use of entail in their testaments to shoddy record keeping shows an incomplete understanding of the apprenticeship training of Virginia's colonial county clerks. While this study is not definitive in its examination of the effects of entail on all of colonial Virginia society, it does suggest that further analysis of colonial testation patterns is needed to discover the true role the practice held in colonial Virginia.

Figure 4. Beverly Manor and Borden Grant

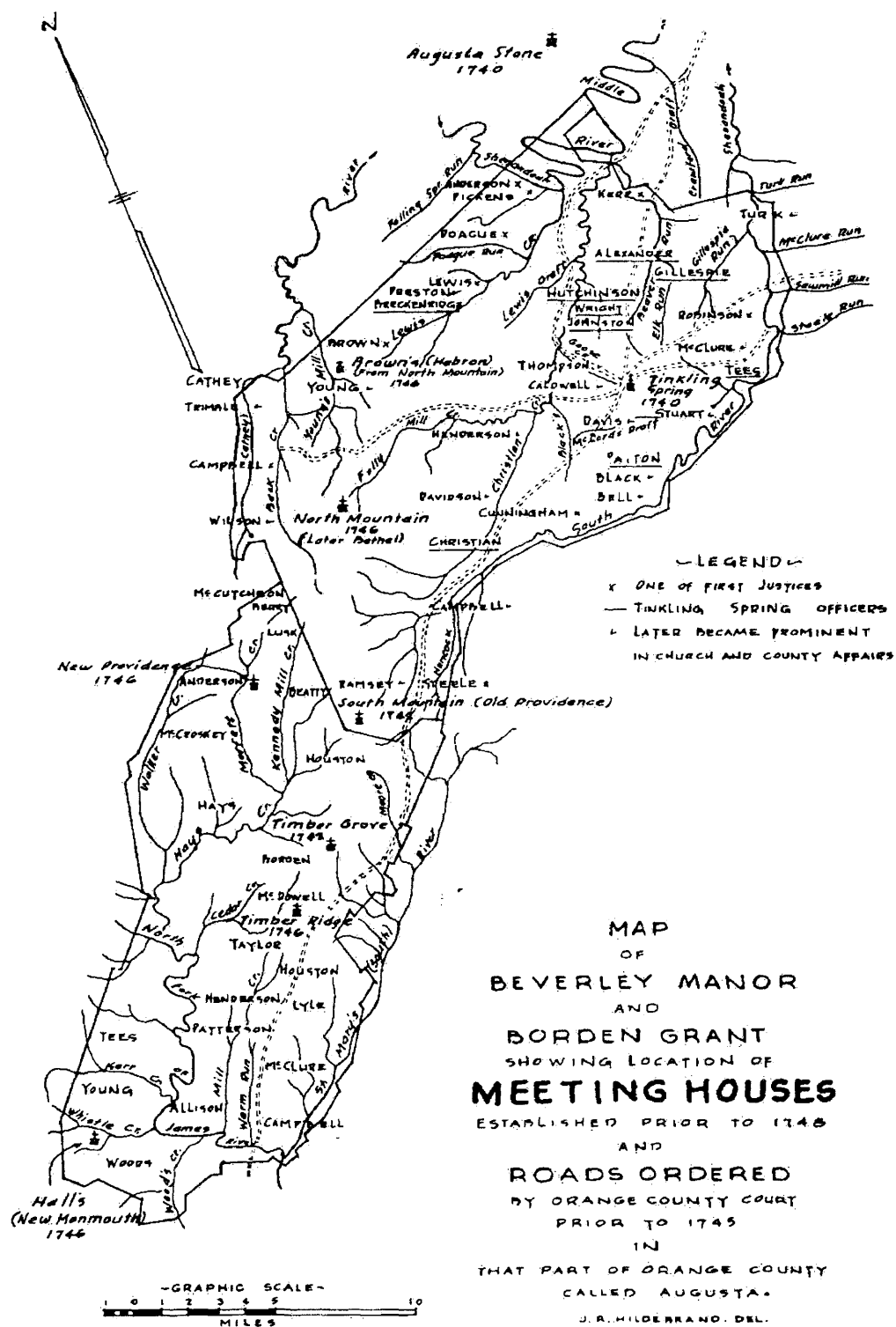


TABLE I

Under-Registration in York County Virginia,
1637-1811

Will Book	Years	Total # of Wills	Total # of Inventories	Under- Registration	% Not Represented in Inventories	% Not Represented in Wills	Estimated # of Deaths
1	1637-1657	23	37	14.183	38.33%	61.67%	96.522
2	1645-1648	16	See above	See above	See above	See above	See above
3	1657-1662	47	27	17.149	63.51%	36.49%	42.511
4	1665-1672	58	49	26.561	54.21%	45.79%	90.397
5	1672-1676	36	22	13.655	62.07%	37.93%	35.444
6	1677-1684	61	57	29.466	51.69%	48.31%	110.262
7	1685-1688	20	26	11.304	43.48%	56.52%	59.800
8	1687-1691	26	12	8.211	68.42%	31.58%	17.538
9	1691-1694	30	25	13.636	54.55%	45.45%	45.833
10	1694-1698	26	33	14.542	44.07%	55.93%	74.885
11	1698-1702	23	29	12.827	44.23%	55.77%	65.565
12	1702-1706	33	39	17.875	45.83%	54.17%	85.091
13	1706-1709	22	20	10.476	52.38%	47.62%	38.182
14	1710-1716	47	61	26.546	43.52%	56.48%	140.170
15	1716-1720	100	110	52.381	47.62%	52.38%	231.000
16	1721-1729	85	111	48.138	43.37%	56.63%	255.953
17	1729-1732	18	25	10.465	41.86%	58.14%	59.722
18	1733-1741	73	130	46.749	35.96%	64.04%	361.507
19	1741-1745	36	48	20.571	42.86%	57.14%	112.000
20	1745-1759	124	201	76.689	38.15%	61.85%	526.815
21	1760-1771	92	141	55.674	39.48%	60.52%	357.098
22	1771-1782	37	150	29.679	19.79%	80.21%	758.108
23	1782-1811	198	105	68.614	65.35%	34.65%	160.682
Totals:		1231	1458	28.427	47.306%	52.694%	3629

TABLE II
Brewer's Data on the Cumulative Impact of Entail

A. Generation	B. Actual Years of Data Collection	C. Actual % of Wills with Entail Provisions	D. Estimated % of Wills with Entail Provision	E. Estimated % of Land Entailed during This Generation	F. Cumulative % of Land Entailed*	G. % of Land Not Entailed**
1 1620-1640	1653-1672	1.4	1	(1)(1)=1	1	99
2 1640-1660	"	"	1	(1)(.99)=1	1+1=2	98
3 1660-1680	"	"	1	(1)(.98)=1	2+1=3	97
4 1680-1700	1698-1703	24.6	25	(25)(.97)=24	3+24=27	73
5 1700-1720	"	"	25	(25)(.73)=18	27+18=45	55
6 1720-1740	1756-1761	35.9 and	26	(26)(.55)=14	45+14=59	41
7 1740-1760	1759-1772	14.6 (avg)	26	(26)(.41)=11	59+11=70	30
8 1760-1780	"	"	26	(26)(.3)=8	70+8=78	20

* Column F adds the result from column E to the previous result in column F.

** Column G (percent of land not entailed) goes back into the equation the next round in column E as the percent of land still available, since the new fraction of wills affects only the remaining land.

APPENDIX A

Will of Jean Pasteur

In the name of God, Amen. I, John Pasteur of the City of Williamsburg Peruk Maker, being sick and weak but in sound and perfect sense and memory well knowing the certainty of death and the uncertainty of the time do make this my last will and testament as follows:

Imprimis I commend my soul to Almighty God who gave It trusting in the merits of my blessed Saviour for salvation and my body to be decently buried at the discretion of my executors hereafter mentioned.

And for the better settling mid disposing of my worldly estate I do give and bequeath it in manner following.

I give and bequeath to my friend Thomas Johnson of Charles City County one tract or parcel of land lying and being in the said County, he paying to my executors or anyone of them the sum of two pounds ten shillings current money.

Item I give and bequeath all the remaining part of my estate after my debts and credits being paid and discharged, both real and personal, to be equally divided between my loving wife Martha Pasteur and my beloved children vim Mary Cosby, wife of Mark Cosby Magdalane Cosby, wife of Samuel Cosby, Lucretia Shields wife of Matthew Shields, James, Blovet, William, Martha and Anne Pasteur.

Further my will is that my house and lot whereon I now live may be sold by my executors.

Lastly I do nominate and appoint my dear wife, Martha Pasteur, and my friends Mr. William Prentis and Mark Cosby to be my executors of this my last will and testament.

In witness whereof I. the said Testator have hereunto set my hand and seal this 18th day of August, 1741.

Jean Pasteur LS

Witnesses: Augustine Claiborne, Andrew Anderson and Thomas Cousine

APPENDIX B

This is a transcription from the book, *Every man His Own Lawyer: or, A summary of the laws of England in a new and instructive method* (London, Printed by W. Strahan, and M. Woodfall, for W. Strahan, J. Rivington, L. Hawes and Co., R. Horsfield, W. Johnston ... {and 6 others}, 1772) by Giles Jacob, 259-60.

A common will of goods and lands.

In the name of God, Amen. I *A. B.* of, &c. gentleman, being weak in boy, but of sound mind and memory (blessed by God) do this day of &c in the year, &c. make and publish this my last will and testament, in manner following, (that is to say,) *Imprimis*, I give to my son *T.B.* the sum of, &c. *Item*, I give and bequeath to my daughter *E.B.* the sum, &c. *Item*, I give to my brother *N.B.* the sum &c. to my sister *M.B.* the like sum of, &c. to my grandson *G.B.* the sum, &c. And to my cousin, &c. *Item*, I give the house I hold by lease from, &c. situate and lying in, &c. which I now live in, to my said son *T.B.* *To hold* to him during his life; and after his decease, I give the same to my daughter *E.B.* during the remainder of my estate and interest therein: and all the rest of my lands and tenements whatsoever, whereof I shall die seised in possession, reversion or remainder, I give to my said son *T.B.* his heirs and assigns for ever. *Item*, all the rest and residue of my goods, chattels, and personal estate whatsoever, I give to my said daughter *E.B.* *And* I make, constitute and ordain my good friends Mr. *C.D* and *E.F.* to be my executors in trust for my said daughter *E.B.* and it is my will, that they shall put out what monies I have for her use, but so as not to be accountable for any bad debt or debts, that shall be contracted; and that they shall retain all their charges and expences whatsoever, in relation to their said trust; also I give them five guineas a-piece as tokens of my love to them, and for their kindness in accepting this trust. And I appoint twenty pounds, and no more, to be expended on my funeral. *In witness* whereof I the said *A.B.* have to this my last will and testament set my hand and and seal, the day of _____ in the ____ year of the reign, &c. and in the year of our lord 1764.

Signed, sealed, published and declared by the said testator, as and for his last will and testament, in the presence of us, who in the presence of each other, have subscribed our names as witnesses thereto.

APPENDIX C

This is a transcription from the book, *Every man His Own Lawyer: or, A summary of the laws of England in a new and instructive method.*

Form of a will, with devise of lands, &c.

In the way of settlement

In the name of God, Amen. I *A.B.* of, &c. Being in good health, and perfect memory, (blessed be God therefore) do this day &c. in the fourth year of the reign of the Lord *George* the Third, &c. and in the year of our Lord 1764, make and publish this my last will and testament, in manner and form following, (that is to say:) *Impremts*, I commend my sould into the hand of Almighty God, he gave it to me; and my body to the earth from whence it came, in hopes of a joyful resurrection, through the merits of my Saviour Jesus Christ; and as for that worldly estate wherewith it has pleased God to bless me, I dispose thereof as follows: *First*, I give to my loving wife *M.B.* the sum, &c. *Item*, I give to my son *H.P.* the sum &c. *Item*, I give to my daughter *F.B.* the sum of, &c. *Item*, I give to my brother, &c. all payable within, &c. after my decease. *Item*, I give unto my said wife *M.B.* *All* my lands in the parish of, &c. which are not settled upon her for her jointure; *To hold* to her during her natural life, she making no spoil, waste or destruction thereon; and from and after her decease, I give and devise the same to my daughter *F.B.* during her natural life; and after determination of that estate, I give and devise the same to my loving brothers *R.B* and *W.B* and their heirs during the life of my said daughter *F.* to the intent to preserve and support the contingent uses and remainders herein after limited: but nevertheless in trust, to permit my said daughter *F.* to receive the rents and profits thereof during her life; and from and after her decease then to remain to the first son of my said daughter *F.* and the heirs of the body of such first son lawfully issuing; and for default of such issue, then to the use and behoof of the second, third, fourth, fifth, and all and every other son and sons of my said daughter *F.* begotten; the elder of such son and sons be always preferred, and to take before the younger of such sons and the heirs of his body; and for default of such issue, then to the use of the body of my said daughter *F.* and the heirs of the body of such daughter and daughters, and for default of such issue, then I give the term of his natural life; and after the determination of that estate, then to the use and behoof of, &c. and their heirs, during his life, and in trust for him, and to the intent and estates after-mentioned; and after his decease, to remain to his issue in tail, in such daughter *F.* and for default of such issue, then to remain to &c., and the heirs male of his body begotten, &c., and for default of such issue, to remain to my right heirs for ever. *Item*, I give to my said wife, during her life, the use of all my plate and household stuff, and after her death, the same to remain to, &c. and for prevention of any imbezilment of the said plate and houshold goods, it is my will, and I do hereby direct, that a particular be taken by my said wife and overseers, of all my said plate and houshold goods, and that she give her covenant to my said overseers, to leave the same to such persons as I have hereby given the same at my death, (their reasonable usage and wearing in the mean time excepted.) *Item*, I give to, &c. ten

guineas a piece to buy them mourning. *Item*, I give to, &c. on guinea a-piece to buy them rings, &c. *Item*, I give to my servant-man and two servant maids, that shall be living with me at the time of my decease, twenty pounds a-piece. *Item*, I give to the poor of the parish where I shall die, the sum of fifty pounds. *Item*, I give all the rest of my goods, chattels and personal estate to my said wife *M.B.* and make and ordain her my said wife sole executrix of this my will, and loving brothers, &c. and good friend, &c. overseers thereof, to take care and see that same performed, according to my true intent and meaning; and for their pains herein, I give and allot to each of them the sum of, &c. *In witness* whereof I the said *A.B.* have to the first sheet of this my last will and testament, containing two sheets of paper, set my hand, and to the last sheet thereof my hand and seal, the day and year above-written.

A.B.

Signed, sealed, published and declared by the said testator, as and for his last will and testament, in the presence of us, who in the presence of each other, have subscribed our names as witnesses thereto.

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